

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

RECEIVED
JUL 17 2005
U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS
JUL 17 2005

.....
CORDIUS TRUST,

Plaintiff,

v.

C.A. NO. 04-MBD-10267

DONALD D. KUMMERFELD,

Defendant.
.....

DEFENDANT'S RULE 62 MOTION FOR STAY OF PROCEEDINGS

Defendant Donald D. Kummerfeld ("Mr. Kummerfeld"), hereby moves the Court pursuant to Fed. R. Civ. P. 62 and Local Rule 40.4 to stay further proceedings in enforcement of the judgment in this case without requiring the posting of a supersedeas bond. As discussed more fully below, plaintiff Cordius Trust ("Cordius") has registered an out-of-state judgment against Mr. Kummerfeld with this Court and now intends to conduct a sheriff's sale of a two-bedroom cottage in Brewster that Mr. Kummerfeld has owned for thirty five years and intends to use as his permanent home upon retirement. Mr. Kummerfeld, who is 70 years old and does not have sufficient assets to post a supersedeas bond for the judgment amount of over two million dollars, has appealed the underlying New York judgment and expects that the Second Circuit will rule on the appeal (which is fully briefed) within a matter of a few months. In the meantime, Mr. Kummerfeld already is abiding by an Order of the United States District Court for the Southern District of New York that he not transfer or further encumber the property in question. Under the circumstances, it would be grossly unfair, as well as contrary to Massachusetts law, for Cordius to force a premature sale of Mr. Kummerfeld's home. Accordingly, the Court should stay further proceedings in connection with its Execution in this action.

Request for Oral Argument

Mr. Kummerfeld respectfully requests that he be allowed oral argument on this motion.

Respectfully submitted,

DONALD D. KUMMERFELD,

By his attorneys,



FOLEY HOAG LLP

Jeffrey S. Follett, BBO #564337

Michael Martin, BBO #653876

Foley, Hoag LLP

155 Seaport Boulevard

Boston, MA 02210

(617) 832-1000

Dated: March 25, 2005

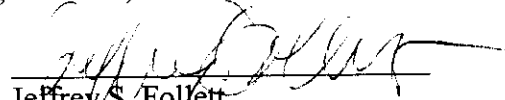
CERTIFICATE OF CONFERENCE

Pursuant to L.R. 7.1(2), I certify that I conferred by telephone with Bradford S. Babbitt, counsel for the plaintiff, on March 18, 2005. We reached agreement that this motion would not need to be addressed on an emergency basis and that the parties would seek to schedule an early hearing with the Court. We were not able to reach agreement with respect to a stay of proceedings.


Jeffrey S. Follett

CERTIFICATE OF SERVICE

I, Jeffrey S. Follett, hereby certify that on March 25, 2005, I caused a copy of the foregoing document to be served by telecopier and first-class mail on Bradford S. Babbitt, Robinson & Cole LLP, 280 Trumbull Street, Hartford, CT 06103-3597.


Jeffrey S. Follett